

## Update

### China

The Ministry of Finance has issued Opinions on Strengthening the Financial Management of Enterprises' Research and Development Costs.

After intellectual property rights are lawfully obtained, the intellectual property maintenance fees, litigation costs, agency fees, costs for "cracking down" counterfeits and other related expenses shall be charged as expenses and should not be included as research and development costs ("R & D costs").

Group enterprises may co-ordinate and combine the use of R & D costs for their wholly-owned and controlled enterprises. The total R & D costs shall not exceed 2% of the consolidated accounting revenues of the group. Where there is an unused or residual balance exceeding 20% of the total sum for a period of 3 years or there is a deficit, the company shall adjust the standard contributions of R & D costs of the group enterprises.

### Hong Kong

Under the Employment (Amendment) Ordinance 2007, the record-keeping period will be extended to 12 months with effect from 13 January 2008.

### US

The US Internal Revenue Service is looking for 115,478 taxpayers who are due refund checks worth about \$110 million after the checks were returned as undeliverable. Taxpayers are encouraged to update their addresses and claim their refunds. The IRS also launched "Where's My Refund?" tool on their website to enable taxpayers to check the status of their refunds.

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*We will manage to address your concern in future issues.*

## Get Your Records in Order

### Credibility could be undermined by your own documents

In a Board of Review case, a taxpayer appealed the deduction of entertainment expenses of which the Revenue allowed only two-third of the amounts.

At the hearing, the taxpayer produced to the Board some Hong Kong restaurants receipts, among which, a receipt bearing a date of '12/11/2002'; a receipt bearing the date of



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'12-7-2002'; and a receipt of 'Restaurant U' bearing the date of '30.6.2002'.

The IRD produced the movement record of the taxpayer issued by the Immigration Department which showed that he was out of Hong Kong on 30 June 2002, 12 July 2002 and 12 November 2002. The wife of the taxpayer pointed out to the Board that the dates on the first two receipts could possibly be 11 December 2002 and 7 December 2002. The Board considered the suggestion was possible but they believed that it was unlikely because in Hong Kong, save perhaps for American organizations or companies, the usual practice was to describe a date with the day coming before the month. Moreover, they found the third receipt bearing "unmistakenly" the date of 30 June 2002 when the taxpayer was not in Hong Kong. These receipts could not substantiate the case but indeed destroyed the credibility. The taxpayers in the case was so lucky that the IRD did not withdraw the two-third deduction previously allowed. (Board of Review Case No. D32/06, 24 May 2006.)

### Some Hints on Mediation



Mediation, if employed appropriately, is a powerful tool in resolving disputes and avoiding the vigorous litigation process. In those matters in which the parties have agreed to mediate voluntarily, it is more likely that they had already got a clearly defined bottom line and anticipated that their adversaries might never agree to it.

Another common obstacle to mediation is the adversarial focus during the litigation process. On the commencement of litigation process, the trial lawyer might have already focused on deploying and positioning the trial strategy. It will be difficult at this stage to shift the focus to a settlement mode which might be perceived as a sign of weakness or retreat in the case. In addition, many litigants who have already spent substantial efforts and money in their cases prepared to continue the "war" instead of "peace talks" even it might best serve their interests.

For most people, prior preparation for mediation might be minimal and rarely involves the participation of the experts. If you try to reach a satisfactory resolution in mediation without incurring further expenses and emotional energy, you need to remind yourselves on

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some key issues:-

1. If a dispute is put in trial, everyone is loser and someone will lose more.
2. Creative approach and productive solutions, which are unavailable in trial, can be used and developed during the mediation process.
3. Mediation meeting allows you to hear each other's story directly without being channeled or filtered out by lawyers.
4. A solution arrived by both parties could earn more respect and compliance, and have a better chance of "win - win" for both.
5. Appointments of professional mediators and experts are effective tools to facilitate the dispute resolving process.

*A financial expert may immediately reconcile the data and assumptions which lead to the differences in the opinions.*

### **What is the role of a financial expert in mediation?**

Most financial disputes involve analyzing and questioning of each other side. A financial expert may immediately reconcile the data and assumptions which lead to the differences in the opinions.

Discussion among experts may help to identify the strengths and weaknesses of each analysis; assess the risks of formulated scenario; uncover important information that parties might fail to consider. Financial experts can address on the financial value of the case that used to narrow down the gap of both sides.

## Life/Balance

### **Polar Bears Capital of the World - Churchill, Manitoba**

*(by Mr. Eric CK Yeung, a traveler who is very keen on exploring scenic places)*

Polar bears, the largest land predators in the world, are always a big attraction at zoos. We used to consider they are cute. A male bear can be over ten feet height and weight up to 1,500 pounds.

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You can get the opportunity of close contact with them in the wild at Churchill, a small northern seaport in Manitoba located on the western shore of Hudson Bay of Canada with population less than 1,000.

The Polar Bear season is relatively short. From October to early November of each year, it is a unique opportunity to view the bears. Polar bears congregate near this small town. They usually wander along the coast and see if the Bay is freeze-up. When the water freezes, they can get onto the ice to hunt their foods. They have a tremendous sense of smell. They can locate seals from as far as 20 miles away even through thick ice.

You can conveniently, comfortably, and safely view polar bears in the natural environment from a specially modified bus (known as "Tundra Buggy"). The vehicle have large tires for travelling over the uneven tundra terrain and built with a safe height for bear viewing. Tundra buggies are heated and have toilet facilities. A maximum of 15 to 16 people per tundra. Some may have rear outside platforms. It offers travellers a safe place to stand.

Each year thousands tourists go to the town and join tour for viewing the bears. Churchill is not accessible by road. The most usual ways getting to Churchill are by flight or by overnight train from Winnibeg of Manitoba. Besides polar bears, you may find more enjoyable if take a train to Churchill in summer. The area boasts wonderful walking trails where wildflowers are plentiful. You also have the opportunity to see Arctic fox, birdlife, woodland caribou, etc.

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#### Reminder

**Tax Holdover :** Consider an application for holding over of payment of provisional profits tax if the assessable profits for the year of assessment are likely to be less than 90% of that of the preceding year of assessment.

**31 January 2008 :** Final extended due date for "M" code current year loss cases.

**Duty to Notify Chargeability under the Inland Revenue Ordinance :** If you are liable to tax in Hong Kong, you have to inform IRD. Section 51(2) of IRO provides that a person chargeable to tax for any year of assessment shall inform the Commissioner in writing that he is so chargeable not later than 4 months after the end of the basis period for that year of assessment unless he has already been required to furnish a Tax Return.

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